

Report to the Commissioner Working Group on State Takeover

Introduction

Commissioner Librera appointed this Working Group to review the existing statute governing State takeover of low- capacity districts and to share its thinking on revisions that would make the law more sensible and on other reforms that would strengthen state intervention efforts and provide for the return of the state-operated districts to local control.

When the takeover law was enacted in 1987, New Jersey was the nation's pioneer—there was no precedent, no “best practices” to cite or follow. The Abbott litigation was in its infancy with no educational remedies yet prescribed by the Supreme Court. Nor at the time was there even discussion about the state adopting the NJ Core Curriculum Content Standards, which now dominate the instructional planning of New Jersey's 2,800 schools. Moreover, the state's certification standards have been strengthened substantially in the intervening years. For example, districts are deficient when less than 75% of their students are deemed proficient on the state assessments. Yet, in 1987 8th graders weren't even tested, then beginning in 1992 they were tested with a basic skills test (EWT), and now with a content-oriented, higher order GEPA. The 75% standard is the same, but the tests are much more difficult. The result is that some relatively affluent districts are no longer meeting the certification standards. So, without a revision to both the standards and the exit criteria that apply them, Paterson, Newark, and Jersey City could remain in state operation in perpetuity. While uniform standards should apply to every district, no one would suggest that the districts with the most difficult educational conditions should have to perform at a higher level than their suburban peers.

Background

Between the charge from the Commissioner, the comprehensive and excellent perspective provided by Professors Tractenberg, Sadovnik, and Holzer, in their report commissioned by the Department, and the consensus of members apparent in its August and September meetings, the Working Group agreed to a framework for completing its work. The following Report outlines this framework in two parts: first, a section devoted to recommendations regarding the ‘key issues’ that framed the Working Group's discussions thus far and require continuing consideration; and second, a step-by-step process proposed for re-establishing local control. A third assignment—the implications of this work for other low-performing districts and DOE's role—will be taken up by the Working Group once it has completed the first phase.

Key Recommendations

Recommendation #1: The takeover statute should be revised to replace the certification requirement for the return to local control with a requirement that the district make significant and sustainable progress in meeting performance standards to be promulgated by the Commissioner.

The present takeover law imposes an all-or- nothing test on state-operated districts which is unlikely to ever be passed. In the absence of a revised law, the State will probably be a permanent presence in the SOSDs, which was never the Legislature's intention. It is sensible, on the other hand, to expect the takeover districts to demonstrate that they are in a position to avoid the conditions and cultures that triggered the State's investigations and takeovers by meeting the standards to be set by the Commissioner.

While certification standards cannot and should not be set aside, the standards for evaluating SOSDs for their readiness for local control should be designed to measure capacity to responsibly resume local operation. The demonstration of such capacity does not entail passing an all-or-nothing test; a demonstration of significant and sustainable progress against the Commissioner's standards would be sufficient and appropriate. In making this recommendation, the Working Group builds on the experience of Compton CA, cited in the Tractenberg Report, where this guiding criterion was applied with convincing results. However sensible this recommendation is in theory, its ultimate effectiveness will be determined by the clarity, precision, measurability, and credibility of the standards that are employed to measure "capacity." These issues are addressed below.

Recommendation #2: The effective and efficient implementation of Abbott's remedies should be a major consideration in judging a district's readiness for local control.

Particularly since "Abbott V" in 1998, the work of the Jersey City, Paterson, and Newark schools has been focused increasingly on implementing the DOE regulatory code drafted in response to the *Abbott* decision. Districts had to ensure a full-day kindergarten program and create or contract for high-quality pre-k programs for every eligible child. Every school was directed to adopt and implement a model of "whole school reform" and to establish and train school management teams. Funding has increased significantly (the aggregate budgets for the three SOSDs have approximately doubled in the last five years). The authors of the takeover law did not and could not incorporate such a seismic shift in the work of city educators into the standards and procedures they set down.

The Working Group finds that the DOE has not integrated full and effective implementation of the Abbott remedies into its expectations for the state-operated districts. In fact, until recently there were no organic connections between the departmental unit charged with SOSD oversight and the several offices responsible for Abbott implementation. **We recommend that Abbott implementation become a major consideration in determining readiness for local control for Jersey City, Paterson, and Newark**, not only as a matter of compliance with the decision's mandates, but as the foundation of significant and sustainable progress in building capacity for local control.

This suggestion implicitly requires that a new set of standards be set for the SOSDs. As certification standards are revised for all New Jersey districts, special requirements will necessarily be included for Abbotts. (A criticism of the existing "Manual for the Evaluation of School Districts" is its failure to even mention the state takeover districts, let alone address their peculiar needs). The Working Group suggests a "layered" system of performance standards, in

which standards applicable to all school districts in the state, standards applicable to all Abbott districts, and standards applicable uniquely in each state-operated school district all would be integrated into a single system of monitoring.

Recommendation #3: DOE should make local capacity the cornerstone of the state's interactions with districts.

The Working Group agreed that a substantial flaw in the state's current approach to state-operated school districts is its inattention to the underlying capacity issues that precipitated the takeovers in the first place. While the Comprehensive Compliance Investigation (CCI) reports cite various deficiencies in local capacity, neither the statutory framework nor DOE's management structure provides for effective technical assistance to address the problems long-term. The current legislation emphasizes the removal of key decision-makers in a district (top executive staff and incumbent board members), but offers no procedures or methods for providing technical assistance, either from the state or an outside agency. Instead, DOE's efforts have emphasized monitoring and compliance, which has produced at best a wary relationship with the SOSD, and at worst a hostile one.

Most notably, while the law requires improved test scores as a condition of local control, it does not address the conditions that impact directly on improved teaching and learning. The huge changes brought on by the adoption of the NJ Core Curriculum Content Standards and mastery of those standards driving classroom instruction were, understandably, unanticipated when the takeover law was adopted. The implications for Jersey City, Newark, and Paterson are complex and enormous. Here, we trust that the DOE's recent initiatives to assist central offices in all Abbotts to increase their capacities to work effectively with schools on instructional issues will redound to the benefit of the SOSDs. Any new system of state operation should include not only the means to identify weaknesses in local capacity, but also strategies to address the deficiencies, a regular process of assessment and public reporting, and a process for ceding incremental authority back to the district as performance improves.

Any systemic effort on the part of the DOE to build local capacity also must include strategies to strengthen the governance structure of the district, and that, in turn, requires fostering meaningful civic engagement. This was another issue frequently cited in the Comprehensive Compliance Investigations, yet limited technical assistance was provided on the part of the DOE to foster meaningful change in this area. Experiences in Compton, CA, Chelsea, MA, and others documented in the Tractenberg Report suggest that the state can, and must, play a leadership role in developing local capacity in this area during the period of state operation. Such a role should include strengthening the current program of board member training; strengthening the ethics codes for board members; providing for meaningful opportunities for input from individuals or groups typically not heard from; fostering linkages to higher education; and committing to "transparency" in governance practices so that the public can access and understand information which drives decision-making. While these are desirable traits in any school district, they are particularly crucial in a state-operated district where failures in the area of governance were a primary reason for the original takeover.

The Chelsea, MA example cited in the Tractenberg report was identified by the Working Group as being particularly instructive in the area of civic engagement. Chelsea, MA was brought under state receivership in 2001 due to chronic fiscal insolvency and perceived municipal corruption. The legislation establishing the takeover required the state-appointed receiver to recommend a new form of government upon expiration of the receivership. In fulfilling this requirement, the state-appointed receiver established a process of “community mediation,” run by three full-time and highly qualified professionals, with two goals: 1) to write the new city charter and 2) build local capacity so that Chelsea citizens could implement the charter effectively after the receivership ended. The process involved extensive interviews with community leaders, community meetings with local residents serving as facilitators, publishing newsletters, and hosting question/answer forums on local cable television. Once a process for community research and feedback had been initiated, a Charter Preparation Team was created with 18 members, among them prominent local and state-level leaders, with the charge of researching various forms of city government and sharing the research through the established community forums. Several meaningful changes were made to the draft as a result of these forums, and ultimately, the charter was approved by a 60%/40% margin with 30% voter turnout. One of the mediators involved in the process described the long-term benefits to Chelsea, MA this way:

...Large segments of the community had become disenfranchised from the political process because they did not believe the existing government could meet their needs. By creating avenues for public input into the charter’s development and by engaging citizens as decision-makers, the process was able to explore and contain a comprehensive accounting of the diverse concerns of the community... In effect, the process of developing consensus for the city charter created a public around the issue of local governance. Before a public could emerge, however, the mediator had to employ interventions to trigger social capital formulation to engage and sustain potential public involvement.” (Tractenberg Report, p155)

Researchers agree the Chelsea, MA case study is a good example of building local capacity through a systematic approach to enhanced civic engagement. Given the similarities between the Chelsea, MA case study and status of the state-operated school districts and their respective communities, the Working Group believed that the Chelsea, MA model was a “best practice” worthy of further study and possible replication.

Recommendation #4: The relationship between the state district superintendents and the boards of education should be clarified and strengthened as part of the transition process, to prevent a recurrence of the governance failures that precipitated the original takeovers.

The CCI reports are replete with evidence that board members and senior management did not work together effectively. A frequent conclusion was that members of all three boards intruded into areas of judgment and practice where they had no authority. Too many board members used their positions to influence hiring and firing decisions, for patronage (including family members), to obtain contracts for friends and associates, for unnecessary travel, and to engage in micromanagement. Clearly, to the extent that such practices can be eliminated or discouraged by changing law, regulation, and governance form, the Commissioner is obligated to do so. Otherwise, one of the most glaring shortcomings in the operation of the three districts will almost certainly be repeated upon return to local control with no benefits from decades of accumulated State presence.

The Working Group believes that governance problems are exacerbated, if not caused by, the low voter participation rate in New Jersey's school board elections. This has been an especially serious problem with the advisory board elections in state-operated districts. We note that Jersey City was an appointed board prior to takeover, so voter turnout in and of itself is not the sole explanation for governance problems. However, the benefits of a representative democracy cannot be attained when less than ten percent of eligible voters vote, such as with the April advisory board elections in the SOSDs. An election that is so invisible to most voters may cede disproportionate influence to well-organized blocs of voters. The problem may be compounded in the SOSDs by confusion about the precise role and powers of advisory school board members, and a belief that because the board is merely advisory it has no power or meaningful role.

The Working Group took note of the report of the committee established by then-commissioner David Hespe and chaired by Greg Butterfield, the then-president of the Jersey City Advisory Board, to advise on the transition to local control in Jersey City. This Committee saw the period between full state operation and full local control as an opportunity to enrich and strengthen relationships between the school board and other local institutions. In particular, it recommended formal recognition of the real or potential contributions of local institutions of higher education by allocating seats to their representatives on a transitional basis (specifically St. Peter's, New Jersey City University and Hudson County Community College). We note that Commissioner Librera reflected the spirit of the "Butterfield" report in his appointment of four nonvoting community liaisons to the three advisory boards, including visible representatives from local colleges and universities. While it is too early to determine their value to their respective boards, the idea is being received with greater warmth by most after expressions of vigorous initial hostility.

Beyond the issues raised by elected boards of education, all districts could benefit from the statutory clarification of the respective roles of the boards and superintendents and other management positions. Specifically, the Working Group notes the background and early experience of Massachusetts with a sweeping school district governance law enacted in 1993 designed to clarify board/management authority. The Working Group believes that the shared powers to approve personnel appointments and contracts in the New Jersey statutory scheme is at the heart of much of the inefficiency and disruption common to many districts. The Massachusetts law focuses and delineates the authority of boards of education to the following:

- *hiring, evaluation, and dismissal of the superintendent;
- *approval of policies;
- *approval of the operating budget; and,
- * approval of capital projects.

The superintendent as chief executive is given full authority to hire, promote, discipline, fire, or grant tenure to all other school district employees. Principals are granted powers of personnel (subject to district approval) and budgeting for their schools, but do not retain tenure. This delineation is an example of sensible organizational practice and could prevent some of the circumstances reported in the CCIs from occurring at all.

The Working Group, as part of its on-going collaboration, has committed itself to oversee a review of the literature on “best practices” regarding school district governance structures, and the superintendent/board of education relationship. The Massachusetts model was discussed as one of many models showing promise, both because it appears to address many of the conditions cited in the CCI Reports, and because it is a model with a track record of statewide implementation, not merely a theoretical basis. This literature review will be submitted to the Commissioner to inform the Department’s legislative agenda.

Discussion regarding application of these “best practices” revealed a diversity of views. A majority of the Working Group agreed that the roles and responsibilities of board members could benefit from greater clarity, but some were concerned that requiring something extraordinary of the state-operated school districts might serve to further stigmatize districts which have already been, in the eyes of some, unjustly portrayed. All agreed that in general what constitutes good school board governance policy for state-operated school districts would also benefit school boards across the state. There was spirited discussion on the question of whether or not the state-operated districts would be an effective venue for a “pilot” of an alternative board governance structure, with a majority supporting such an idea, and board member representatives cautioning against further stigmatizing the state-operated districts with regulations different from the rest of the state.

On the question of board structure, however, the Working Group agreed that the referendum to be held upon resumption of local control should offer more choices of governance structure than the Type I or Type II status offered in the current statute. The choices could include a model comprised of some combination of appointed or elected members, or any alternative structures identified by the “best practices” literature review initiated by the Group.

Recommendation #5 – While the deficiencies in the current law’s exclusive focus on the DOE’s standards for school district certification are amply documented, it is essential that the three districts and the DOE demonstrate that there has been significant and sustainable improvement in the conditions cited in the Comprehensive Compliance Investigations.

While the CCIs were completed many years ago and responded to a set of compliance standards we now seek to change, it is important that each district demonstrate substantial progress in overcoming the deficiencies cited in those reports. The Working Group requested an analysis of the three CCIs to determine how they can be used to inform the current evaluation. While each district’s CCI produced unique findings, there is a strong clustering of negative findings in the area of governance, board/management relations, and inappropriate board intrusion. The standards for measuring local capacity should reflect the local conditions in each district, including the findings in the CCI reports to the extent that they remain relevant.

Recommendation #6 – DOE must strengthen its capacity to provide technical assistance to struggling school districts. In doing so, the ‘monitoring’ and ‘technical assistance’ functions of the Department should be segregated to avoid conflicts and promote clarity of purpose.

It was the Working Group's consensus that in order for the new system to work effectively the DOE itself must have the capacity, resources, structure and commitment to oversee the process of building local capacity in the takeover and other *Abbott* districts effectively. The early efforts to improve DOE assistance to Abbott districts for Phase II of Abbott implementation suggest that much of the talent for the technical assistance effort will have to be assembled from successful practitioners outside the department. For this reason, and also to enable both the monitoring and technical assistance functions to be performed effectively and without conflict within the department, these functions should be performed separately. Assessment of local district performance and capacity also should be handled separately from the department's monitoring and enforcement functions.

In this regard, the Commissioner may wish to draw from the Compton, California experience described in the "Tractenberg Report." In particular, the process may benefit from the appointment of a third party (in California, the Legislature established an independent state agency, the Fiscal Crisis Management and Assistance Team, "FCMAT") to carry out the assessment, arrange for necessary technical assistance and make recommendations to the Commissioner regarding readiness for local control. A third party, such as FCMAT, may be better positioned to render objective assessments concerning the district's capacity for self-governance, particularly since the "monitored" (the district) and the "monitor" (the state) are both likely to be seen as having strongly vested interests in the outcome of the assessment. The Working Group has not identified any existing groups that might qualify, although it is confident that one can be found or created, as a free-standing organization or one attached to a university or, even, state government.

Recommendation #7: The current statutory framework for transition to local control is abrupt and unrealistic. Accordingly, a new framework for reestablishment of local control must be established.

The current law provides an abrupt and unrealistic transition period of only one year from total state control to total local control during which state-appointed executive leadership remains in place while the board assumes full powers. The Working Group believes that the State's presence in state-operated districts should not be seen as an "all or nothing" undertaking, but rather a thoughtful and calibrated presence tied to the demonstrated capacity of the district.

On the issue of an appropriate process for returning control to the local board of education, we suggest that the Butterfield Committee was also on the right track. Power should be ceded back to the board of education in phases as the district demonstrates capacity in each of several areas of district operation. The level of state control should therefore gradually diminish as capacity is demonstrated in more of these areas. Once capacity has been demonstrated in all areas, the state's role should shift from control to monitoring. Indeed, even after decision-making power has been ceded completely back to the board of education, state monitoring should continue for a period of time to prevent "backsliding" of district capacities. The Commissioner, in structuring this phase, should draw upon the model provided by the California statutes governing state operation of school districts, which provide for a "trustee" to be appointed upon resumption of local control, to "monitor and review the operation of the district." In Compton,

California, the state-appointed administrator of the district was appointed to serve as trustee upon the resumption of local control, and he has assisted in providing for a smooth transition.

Consistent with this framework, it may be helpful to conceptualize the process of moving from state operation to local control as consisting of four time periods: 1) a period of full state operation, in which the state district superintendent has all the powers and authority of a local board of education and superintendent; 2) a period of partial state operation/partial local control, in which the local board has authority over some aspects of district operation, based on a determination that it has demonstrated the capacity to handle those aspects, 3) a period of transition, in which the local board has full control and authority over all aspects of district operations without state control, and the state's role is limited to heightened monitoring and oversight, and 4) a period after transition, when a new local board of education has been formed, in accordance with a referendum, and the new board has full authority over district operations and is subject to the same monitoring and oversight provided for all *Abbott* districts.

Process for Reestablishing Local Control

Based on this framework, the Working Group recommends the following process for reestablishing local control in the state-operated school districts.

Step 1-Establishing standards. The Commissioner will establish objective, measurable standards in the following areas of school district operation:

- curriculum and instruction, pupil achievement, including special and bilingual education
- personnel management, including professional development and leadership development
- community relations, including parent and community collaboration
- board of education operations, including policy development, and board/management relations
- financial management
- facilities management

The standards will improve upon the existing certification monitoring indicators by drawing from “best practices” derived from multiple sources, including:

- CCI findings that led to state takeover
- Existing State certification standards
- *Abbott* requirements
- Compton, CA (FCMAT), the Kentucky DOE, the Hartford Improvement Plan, the West Virginia DOE and other case studies from the Tractenberg Report
- Annenberg Institute for School Reform, specifically standards for assessing central office impact on improved teaching and learning.

Each standard will be expressed as an objective, measurable performance requirement. The emphasis is on significant, sustainable improvement, not on the present criterion that calls for 100% compliance with each standard.

In each of the six areas designated above, it would be possible for a district to qualify for local control as performance warrants in that area. By way of example, Paterson might be judged to be ready for local control in the areas of facilities management and community relations, but not ready in curriculum and instruction, personnel, or financial management. A district would resume authority gradually based on performance in each area, as opposed to the “all or nothing” approach dictated by the current statutory framework.

Step 2-Assessing District Capacity to Meet Standards. The Department, or an independent organization or agency designated by the Commissioner or established by the Legislature, would conduct a comprehensive, baseline assessment of each of the state-operated districts based on those standards. This assessment could involve the districts themselves in providing an initial self-evaluation. It is possible, but not desirable, that the assessments would be conducted entirely by DOE personnel.

Step 3-Determining the Extent to which Local Control can be Reestablished. Based on the assessment, the Commissioner would determine whether or not the district has demonstrated its capacity to assume responsibility for any of the target areas. As to any area or areas in which a state-operated district has demonstrated such capacity, local control would be restored in the manner described below. If a district has demonstrated the requisite capacity in all areas, full local authority and control would be reestablished in the manner described below. In any area where the district is deemed to have fallen short, it should be clear from the report in what exact ways the district missed the threshold standard and what capacity would have to be developed in order for local control to be reestablished.

Step 4-Developing and Implementing a Recovery Plan. In any area in which a district has failed to demonstrate sufficient capacity for local control, the Department (or the independent organization or agency) and the district would jointly develop a recovery plan setting forth how the district will develop the necessary capacity, and what support it will require from the state and other sources to that end. DOE or the outside organization or agency would be responsible for securing whatever assistance and consultation is necessary from sources that might include the Abbott technical assistance unit in the DOE, colleges and universities, or consultants. DOE’s recent experience in recruiting and deploying monitors to work in urban districts such as Asbury Park, Camden, and Garfield is a useful background to build on.

Step 5-Measuring Progress in Implementing a Recovery Plan. The organization, agency, or state government entity that performs the assessment and develops the recovery plan with the district would systematically monitor and regularly report (at least every 6 months) on the district’s progress in moving toward acceptable performance levels. These reports would be public.

Step 6-Returning Control to the State-Operated District. When the assessment organization or agency has determined that the district has made acceptable progress, it would recommend to the Commissioner that the legal rights, duties and powers relevant to that area or areas be returned to the local board. If the Commissioner agrees, he would so recommend to the State Board of Education. The final decision for the reestablishment of local control would rest with the State Board upon recommendation by the Commissioner.

After reestablishment of full local control, the following transitional measures would remain in place:

- The Department would continue to monitor district performance in relation to the standards.
- The board of education established during state operation should remain in existence and function as a transitional board for a period of not less than one year nor more than two years, until the voters of the district decide, by referendum, upon a new board structure. Additional structures beyond the current Type I/Type II options set forth in current statute (including options which may combine appointed and elected members) would be considered by the public in this referendum. The board of education would be required to inform the public about various forms of board structure and provide opportunities for meaningful public discussion on this issue.
- The state district superintendent would continue to work with the district in an advisory capacity for a period of two years after resumption of local control, to provide monitoring and oversight and assist in transition to a new board and administration.
- At the completion of the transition, the Commissioner would provide for a system of continuous and close monitoring by the state for a period not to exceed five (5) years. This could be accomplished in a number of ways, including providing for more frequent monitoring by the County Superintendent of Schools, using both the Office of State-operated School Districts and the Technical Assistance Task Force Teams to provide more frequent assessments of performance as required. The Commissioner also would appoint a representative to serve as a non-voting member of the board of education for a period of five years.